

REMARKS

Favorable consideration and allowance are requested for claims 1-3, 6-8, and 24-37 in view of the following remarks.

Status of the Application

Claims 1-3, 6-8, and 24-37 are pending in this application. Claims 1-3, 6-8, 32, 33, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Odom *et al.*, Cisco VoIP Call Admission Control (the “Odom reference”) in view of U.S. Patent No. 6,388,990 to Wetzel (the “Wetzel patent”). Claims 24-27, 29-31, and 34-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Odom reference in view of U.S. Patent No. 6,697,378 to Patel (the “Patel patent”). Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Odom reference in view of the Patel patent, and further in view of Wetzel patent. Claims 4, 5, and 9-23 were previously canceled.

Rejection under 35 U.S.C. § 103(a)

According to the outstanding Office Action, the subject matter of claims 1-3, 6-8, 32, 33, and 37 is rendered obvious by the combination of the Odom reference and the Wetzel patent. In particular, and with respect to claim 1, the Office Action states that, “Wetzel discloses a system in which a digital subscriber line trains at a data speed which is higher than the subscribed data rate of the digital subscriber line,” and that “Wetzel’s method avoids network congestion caused by data rate mismatches between the DSL connection and a

corresponding PVC through the connection-oriented packet network.” Office Action at 4.

In response, Applicants acknowledge that the Wetzel patent describes a “method and system for provisioning remote user data access over digital subscriber lines (DSL’s) through connection-oriented packet networks.” Wetzel patent, abstract. This training, however, is performed only once, namely, at the initial set up of the system as described in detail in the Wetzel patent at Figures 3 to 6 and at column 7, line 52 to column 11, line 55. Moreover, the training rate is only transmitted by the multiplexer at the service provider, and there is no disclosure or suggestion that the subscriber uses a training rate when establishing a connection to the service provider.

In particular, the Wetzel patent states, “the DSL terminal units are directed to test for the maximum trainable rate before settling to a trained data rate not substantially greater than the subscribed data rate, and to communicate the maximum trainable data rate to a network operations center computer.” Wetzel patent, col. 6, line 66 to col. 7, line 3. In the Wetzel patent, the DSL modem at the subscriber’s premises and the DSL access multiplexer at the service provider are both programmed to have certain transmission parameters. *See id.* at col. 8, lines 4-17. In particular, it is the multiplexer at the service provider in the Wetzel patent that is programmed to train at a speed that is not substantially higher than the subscribed rate (*id.* at col. 8, lines 28-40) and not the modem at the subscriber’s premises.

Therefore, it is clear that in the Wetzel patent, when a subscriber initiates a connection to the service provider, no data are transmitted at a rate that is greater than the subscribed rate nor is there transmission of bursts of trial data at a higher data rate than the packets to be transmitted on initiation of the continuous stream of data. In effect, the majority of the data received by the subscriber is at the subscribed rate. Moreover, there is no disclosure or suggestion that bursts of trial data are routinely employed when establishing a connection between the subscriber and the service provider as the training rate is only used during setting up of the connection between a subscriber and the service provider. Further, while the Wetzel patent avoids network congestion caused by data rate mismatches, this method is only used when setting up the system/connection and only at the service provider's end.

Therefore, Applicants respectfully submit that the one of ordinary skill in the art would not have looked to the Wetzel patent to provide the feature of claim 1 not provided in the Odom reference. And, as a result, claim 1 is patentable over the cited references. For the same reasons, claims 2, 3, 6-8, 32, 33, and 37 are also patentable.

With respect to claims 24-27, 29-31, and 34-36, the Office Action stated that the subject matter of these claims is rendered obvious by the combination of the Odom reference and the Patel patent. In response, and with respect to claim 24, Applicants respectfully submit that neither cited reference, either alone or in

combination, discloses or suggests “changing the priority of the transmission of [the] continuous stream of data” as set forth in the claim.

In particular, the portion of the Patel patent cited in the Office Action states in relevant part, “A[n] IP data connection could be assigned a ‘high priority’ class, but based on some real-time statistics such as TCP packet losses, or call failures, the present invention dynamically changes the priority class, thus enabling other reliable TCP connections a higher priority.” Patel patent, col. 7, lines 44-48. There is no disclosure or suggestion in the Patel patent, however, that the change in priority occurs when the packet loss rate is not acceptable. Therefore, Applicants respectfully submit that independent claim 24 is patentable over the cited references. And for the same reasons, claims 25-27, 29-31, and 34-36 are also patentable.

With respect to claim 28, the Office Action stated that the subject matter of this claim is rendered obvious by the combination of the Odom reference and the Wetzel and Patel patents. In response, Applicants respectfully submit that the Wetzel patent does not disclose the subject matter of the Odom reference and the Patel patent missing from claim 24, as discussed above. Therefore, this claim is also patentable.

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If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #038665.56184US).

Respectfully submitted,

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